

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MOISES ANTONIO PARADA HERNANDEZ
et al.,

Petitioners,

v.

JOSHUA JOHNSON, et al.,

Respondents.

Civil Action No. 3:25-CV-2729-K-BN

**ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS AND
RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER**

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I. Introduction

Petitioners Moises Antonio Parada Hernandez and Ana Pineda, husband and wife, seek a writ of habeas corpus pursuant to 28 U.S.C. § 2241 to challenge Parada Hernandez's recent detention by Immigration and Customs Enforcement (ICE), as well as to challenge the anticipated detention of Pineda at some later time. They proceed under a theory that neither Parada Hernandez nor Pineda can be subject to mandatory immigration detention, but rather must be given individualized bond hearings in connection with their pending removal proceedings. Parada Hernandez and Pineda also bring a related claim under the Administrative Procedure Act (APA) to challenge a decision issued by the Board of Immigration Appeals (BIA) addressing whether aliens who enter the United States unlawfully (e.g., without inspection or admission) and are then placed in removal proceedings are entitled to a bond hearing or instead are subject to mandatory detention. Finally, in addition to their habeas petition, Parada Hernandez and Pineda have also filed a motion for temporary restraining order that likewise asserts that they are entitled to individualized bond determinations. As explained herein, though, Parada Hernandez and Pineda are not entitled to any relief on either their petition or their motion.

First, Parada Hernandez and Pineda have failed to exhaust administrative remedies. Upon being detained, aliens in Parada Hernandez or Pineda's position can seek a custody redetermination hearing (i.e., a bond hearing) before an immigration judge (IJ), and if, as Parada Hernandez and Pineda anticipate may happen in their situation, the IJ declines to order a release under 8 U.S.C. § 1226(a) on grounds that their detention is instead mandatory pursuant to 8 U.S.C. § 1225(b)(2)(A), that determination can be appealed to the BIA (which, to be sure, has now affirmed this approach in a precedential decision). But it may also be the case that an IJ determines that an alien in Parada Hernandez or Pineda's position cannot be released on bond for

some other reasons, or in the interim there may be additional administrative developments that affect their removal proceedings in unforeseen ways, such that the question of whether bond is theoretically available would be irrelevant. Requiring exhaustion of administrative procedures is, for this very reason, appropriate here.

In any event, Parada Hernandez is currently detained under § 1225(b)(2)(A) and is therefore ineligible for release under § 1226(a)—and the same would be true of Pineda, were she to be detained. Parada Hernandez seeks to circumvent the detention statute under which he is rightfully detained to secure an administrative bond hearing that he is not entitled to. He argues that, contrary to the plain language of § 1225(b)(2)(A), the authority for his detention is better understood to arise under § 1226(a), a detention statute that allows for release on bond or conditional parole. But that argument fails to square with the fact that he falls neatly and precisely within the statutory definition of aliens subject to detention pursuant to § 1225(b)(2)(A). And the same is also true of Pineda—although her claims against detention are hypothetical and unripe at this time, they would nonetheless fail for the same reason. The Court should therefore deny the petition for a writ of habeas corpus and the related motion for temporary restraining order, in their entirety.

II. Background

A. Parada Hernandez and Pineda enter the United States unlawfully and are placed in removal proceedings.

At some time on or about March 2, 2019, Parada Hernandez, a native of El Salvador, entered the United States at an unknown location without being inspected, admitted, or paroled by an immigration officer. (*See* App. 002.) He was later detained and interviewed by an asylum officer. (App. 002.) The asylum officer determined that Parada Hernandez had a credible fear of returning to El Salvador, and therefore Parada Hernandez was placed in removal proceedings

under § 240 of the Immigration and Nationality Act (INA), which is codified at 8 U.S.C. § 1229a.¹ (App. 002, 003.) The charging document issued to commence the removal proceedings (the “notice to appear”) specifically alleged that Parada Hernandez was an “applicant for admission” to the United States who had not been admitted or paroled. (App. 003.) Parada Hernandez was released on his own recognizance in April 2019. (App. 002.) However, on October 7, 2025, he was taken back into custody by ICE on the basis that he is subject to mandatory detention under INA § 235 (8 U.S.C. § 1225). (App. 002.)

Pineda is not currently in immigration detention. However, in the petition she states that she is likewise a native of El Salvador who is currently in removal proceedings after she entered the United States—apparently also without being admitted or paroled in by an immigration officer—in 2018. (Dkt. No. 1, ¶ 27.) Therefore, her situation appears to be similar to Parada Hernandez’s.

B. Parada Hernandez and Pineda file a habeas petition to challenge the government’s ability to detain them under 8 U.S.C. § 1225.

Shortly after Parada Hernandez was detained, he and Pineda filed their habeas petition. (Dkt. No. 1.) They generally assert that aliens who are arrested inside the United States and placed in removal proceedings are (or should be) subject to the detention provisions of 8 U.S.C. § 1226, which allows for release on bond, and that the government has instead misclassified Parada Hernandez, Pineda, and similarly situated aliens as being subject instead to 8 U.S.C. § 1225, which does not allow for release on bond. (Dkt. No. 1, ¶ 2.) Parada Hernandez and Pineda seek habeas relief in four counts by which they assert an entitlement to a bond hearing of

¹ In contrast, if no credible fear had been found, Parada Hernandez would have been subject to expedited removal proceedings and would not have received the benefit of the § 1229a removal proceedings. *See* 8 U.S.C. § 1225.

the type they could receive if detained under § 1226. (Dkt. No. 1, ¶¶ 48–58.) And in a fifth count, they bring an APA claim by which they challenge the BIA’s decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2015). (Dkt. No. 1, ¶¶ 59–60.)

III. Argument and Authorities

The Court should deny Parada Hernandez and Pineda’s petition and motion, for the following reasons:

A. Parada Hernandez and Pineda have not exhausted administrative remedies.

The Supreme Court “long has acknowledged the general rule that parties exhaust prescribed administrative remedies before seeking relief from the federal courts.” *McCarthy v. Madigan*, 503 U.S. 140, 144–45 (1992). Exhaustion “serves the twin purposes of protecting administrative agency authority and promoting judicial efficiency.” *Id.* at 145. The rationale for administrative exhaustion applies equally in the context of seeking relief of denial of a bond hearing via a writ of habeas corpus, even though the statute does not mandate exhaustion for situations other than appeals for final orders of removal. *See id.* at 144 (explaining that “where Congress has not clearly required exhaustion, sound judicial discretion governs”). As the Fifth Circuit has explained, “a petitioner must exhaust available avenues of relief and turn to habeas only when no other means of judicial review exists.” *Lee v. Gonzalez*, 410 F.3d 778, 786 (5th Cir. 2005).

Here, Parada Hernandez apparently has not yet attempted to obtain bond from an IJ, and so any request at this time to order a bond hearing via a writ of habeas corpus is premature, at best. The same is also true with respect to Pineda—and indeed even more so, given that she is not in immigration detention at this time. Subsequent developments may moot the issues Parada Hernandez and Pineda are complaining about in this proceeding, or cause their cases to develop

in other ways that obviate the need for any decision by this Court. For these reasons, exhaustion of administrative procedures is appropriate and should occur before the matters presented in Parada Hernandez and Pineda's petition become the subject of federal litigation.

B. An APA claim is not available.

Parada Hernandez and Pineda's attempt to proceed under the APA also fails. By the APA's terms, it is available only for final agency action "for which there is no other adequate remedy in a court." 5 U.S.C. § 704. Thus, Parada Hernandez and Pineda's APA claim is independently barred by this limitation in § 704.

In *Trump v. J.G.G.*, the Supreme Court held that where immigration detainees' claims "necessarily imply the invalidity of [] confinement," those claims "must be brought in habeas." 604 U.S. 670, 672 (2025) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in a concurrence, "given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another 'adequate remedy in a court,' I agree with the Court that habeas corpus, not the APA, is the proper vehicle here." *Id.* at 674 (Kavanaugh, J. concurring).

Here, as in *J.G.G.*, habeas is an "adequate remedy" through which Parada Hernandez can challenge any future denial of a bond hearing (and Pineda can do likewise, if she is at some point detained). Thus, even if their APA claim had merit, which it does not, the result would be the same as that in habeas—the government would presumably be required to hold a bond hearing to assess whether detention can continue. For this reason, Parada Hernandez and Pineda are not entitled to any relief on their APA claim.

C. Parada Hernandez and Pineda are not entitled to any relief, under any theory, because they are applicants for admission who therefore may properly be subjected to mandatory detention under 8 U.S.C. § 1225 without any requirement for a bond hearing.

If the Court reaches the merits, this case turns on which of two separate statutory

detention provisions can apply to aliens like Parada Hernandez and Pineda: 8 U.S.C. § 1225(b)(2)(A), or 8 U.S.C. § 1226(a)? The provision at § 1225(b)(2)(A) applies specifically to any “applicant for admission”—and calls for mandatory detention. The provision at § 1226(a), on the other hand, is more general in nature and simply says that “an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States”—with the Attorney General then given the discretion to either continue to detain the alien or to release the alien on bond or conditional parole. Thus, the relevant question here is who constitutes an “applicant for admission” who is potentially subject to § 1225(b)(2)(A) and its more restrictive mandatory detention provision.

1. Parada Hernandez and Pineda are considered applicants for admission because they entered the United States without being inspected, admitted, or paroled.

The statutory text supplies the answer. “As with any question of statutory interpretation, [the] analysis begins with the plain language of the statute.” *Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009). Section 1225(a)(1) deems any “alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)” to be an “applicant for admission.” 8 U.S.C. § 1225(a)(1); *see also Ascencio-Rodriguez v. Holder*, 595 F.3d 105, 108 n.3 (2d Cir. 2010) (explaining that an alien who “was present in the country and had been for years,” but “whose entry into the United States was not lawful or authorized” was “not considered ‘admitted’ into the United States,” and that such aliens are “treated as ‘applicants for admission’” and “deemed to be legally at the border”).

Accordingly, by its very definition, the term “applicant for admission” includes two

categories of aliens: (1) arriving aliens, but also (2) aliens present without admission. *See DHS v. Thuraissigiam*, 591 U.S. 103, 140 (2020) (explaining that “an alien who tries to enter the country illegally is treated as an ‘applicant for admission’”); *Matter of Lemus-Losa*, 25 I&N Dec. 734, 743 (BIA 2012) (“Congress has defined the concept of an ‘applicant for admission’ in an unconventional sense, to include not just those who are expressly seeking permission to enter, but also those who are present in this country without having formally requested or received such permission . . .”). Indeed, that “arriving aliens” are just one subset of the larger group of “applicants for admission” is made clear by the fact that “arriving alien” is defined as “an applicant for admission *coming or attempting to come into the United States at a port-of-entry*”—thus making clear that there are other types of applicants for admission. 8 C.F.R. §§ 1.2, 1001.1(q) (emphasis added).

All aliens who are applicants for admission “shall be inspected by immigration officers.” 8 U.S.C. § 1225(a)(3); *see also* 8 C.F.R. § 235.1(a). An applicant for admission seeking admission at a port-of-entry “must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal . . . and is entitled, under all of the applicable provisions of the immigration laws . . . to enter the United States.” 8 C.F.R. § 235.1(f)(1); *see also* 8 U.S.C. § 1229a(c)(2)(A) (describing the related burden of an applicant for admission in removal proceedings). “An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry . . . is subject to the provisions of [§ 1182(a)] and to removal under [§ 1225(b)] or [§ 1229a].” 8 C.F.R. § 235.1(f)(2).

Here, there does not appear to be any dispute that Parada Hernandez and Pineda did not present at a port-of-entry but instead entered the United States elsewhere, in an unlawful fashion

and without having been admitted or paroled after inspection by an immigration officer. Each is, therefore, an alien present without admission and, consequently, an applicant for admission.

2. Because Parada Hernandez and Pineda are applicants for admission, they are subject to detention under 8 U.S.C. § 1225(b)(2).

Applicants for admission may be placed in so-called expedited removal proceedings under § 1225 or, as has occurred here with respect to Parada Hernandez and Pineda, they may be placed in § 1229a removal proceedings (which are the more comprehensive form of removal proceedings that also generally apply to aliens other than applicants for admission who are charged with removability). But even if placed in § 1229a proceedings, applicants for admission may be subjected to mandatory detention under § 1225 such that they are ineligible for release on bond. Specifically, aliens present without admission placed in § 1229a removal proceedings are both applicants for admission as defined in § 1225(a)(1) *and* aliens “seeking admission,” as contemplated in § 1225(b)(2)(A). Such aliens are subject to detention under § 1225(b)(2)(A) and thus ineligible for release on bond.

Section 1225(b)(2)(A) “serves as a catchall provision that applies to all applicants for admission not covered by § 1225(b)(1).” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *see* 8 U.S.C. § 1225(b)(2)(A), (B). Under § 1225(b)(2)(A), “an alien who is an applicant for admission” “*shall be detained* for a proceeding under section 1229a” “if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

Thus, according to the plain language of § 1225(b)(2)(A), applicants for admission in § 1229a removal proceedings “*shall be detained*.” *Id.* (emphasis added). “The ‘strong presumption’ that the plain language of the statute expresses congressional intent is rebutted only in ‘rare and exceptional circumstances.’” *Ardestani v. INS*, 502 U.S. 129, 135–36 (1991)

(quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). And as the Supreme Court observed in *Jennings*, nothing in § 1225(b)(2) “says anything whatsoever about bond hearings.” 583 U.S. at 297. Further, there is no textual basis for arguing that § 1225(b)(2)(A) applies only to arriving aliens—no provision within § 1225(b)(2) refers to “arriving aliens,” or limits that clause to arriving aliens, and Congress instead intended for it to apply generally “in the case of an alien who is an applicant for admission.” 8 U.S.C. § 1225(b)(2)(A). Where Congress means for a rule to apply only to “arriving aliens,” it has used that specific term of art or similar phrasing. *See, e.g., id.* §§ 1182(a)(9)(A)(i), 1225(c)(1).

The BIA’s recently issued published decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is consistent with these principles. In its decision, the BIA affirmed “the Immigration Judge’s determination that he did not have authority over [a] bond request because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.* at 220.²

The BIA concluded that aliens “who surreptitiously cross into the United States remain applicants for admission until and unless they are lawfully inspected and admitted by an immigration officer. Remaining in the United States for a lengthy period of time following entry without inspection, by itself, does not constitute an ‘admission.’” *Id.* at 228. To hold otherwise would lead to an “incongruous result” that rewards aliens who unlawfully enter the United States without inspection and subsequently evade apprehension for a number of years. *Id.*

² Previously, as alluded to in BIA decisions, § 1226(a) had been interpreted as an available detention authority for aliens who were present without admission and placed in § 1229a removal proceedings. *See, e.g., Matter of Cabrera-Fernandez*, 28 I&N Dec. 747, 747–48 (BIA 2023). However, as noted by the BIA, the BIA had not previously addressed this issue in a precedential decision. *See Matter of Yajure Hurtado*, 29 I&N Dec. at 216.

In so concluding, the BIA rejected the alien's argument that "because he has been residing in the interior of the United States for almost 3 years . . . he cannot be considered as 'seeking admission.'" *Id.* at 221. The BIA determined that this argument "is not supported by the plain language of the INA" and creates a "legal conundrum." *Id.* If the alien "is not admitted to the United States (as he admits) but he is not 'seeking admission' (as he contends), then what is his legal status?" *Id.* (parentheticals in original).

The decision in *Matter of Yajure Hurtado* is consistent not only with the plain language of § 1225(b)(2), but also with the Supreme Court's 2018 decision in *Jennings*. Specifically, in *Jennings*, the Supreme Court explained that § 1225(b) applies to all applicants for admission, noting that the language of § 1225(b)(2) is "quite clear" and "unequivocally mandate[s]" detention. 583 U.S. at 300, 303.

Similarly, relying on *Jennings* and the plain language of §§ 1225 and 1226(a), the Attorney General recognized in *Matter of M-S-* that §§ 1225 and 1226(a) describe "different classes of aliens." 27 I&N Dec. 509, 516 (AG 2019). And in *Matter of Q. Li*, the BIA also held that an alien who illegally crossed into the United States between ports-of-entry and was apprehended without a warrant while arriving is detained under § 1225(b). 29 I&N Dec. 66, 71 (BIA 2025). These decisions make clear that all applicants for admission are subject to detention under § 1225(b). *See also Florida v. United States*, 660 F. Supp. 3d 1239, 1275 (N.D. Fla. 2023) (explaining that "the 1996 expansion of § 1225(b) to include illegal border crossers would make little sense if DHS retained discretion to apply § 1226(a) and release illegal border crossers whenever the agency saw fit").

Given that § 1225 is the applicable detention authority for all applicants for admission—both arriving aliens and aliens present without admission alike, regardless of whether the alien

was initially processed for expedited removal proceedings under § 1225(b)(1) or placed directly into removal proceedings under § 1229a—and further given that both “§§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings,” *Jennings*, 583 U.S. at 302, Parada Hernandez and Pineda have no grounds to complain that they are subject to mandatory detention and are not entitled to a bond hearing.

To sum up, Parada Hernandez and Pineda are properly considered applicants for admission (specifically, an alien present without admission), and they were placed into removal proceedings under § 1229a. They are therefore subject to detention pursuant to § 1225(b)(2)(A) and there is no requirement that they be eligible for bond.

3. The statutory history supports the government’s understanding of who is considered an applicant for admission.

It is respectfully submitted that the statutory text, as discussed above, is dispositive of the relevant issue and the Court need go no further. But if the Court needs more, the structure of the statutory scheme prior to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546, bolsters the understanding that under the current statutory scheme, all applicants for admission are subject to detention under § 1225(b). The broad definition of applicants for admission was added to the INA in 1996. Before 1996, the INA only contemplated inspection of aliens arriving at ports-of-entry. *See* 8 U.S.C. § 1225(a), (b) (1994) (discussing “aliens arriving at ports of the United States” and “the examining immigration officer at the port of arrival”). Relatedly, any alien who was “in the United States” and within certain listed classes of deportable aliens was deportable. *Id.* § 1251(a). One such class of deportable aliens included those “who entered the United States without inspection or at any time or place other than as designated by the Attorney General.” *Id.* § 1251(a)(1)(B). Aliens were excludable if they were “seeking admission” at a port-of-entry or

had been paroled into the United States. *See id.* § 1225(a); *see also id.* § 1182(a). At the time, deportation proceedings and exclusion proceedings differed and began with different charging documents. *See Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 175 (1993) (explaining the “important distinction” between deportation and exclusion). And the placement of an alien in exclusion or deportation proceedings depended on whether the alien had made an “entry” within the meaning of the INA. *See* 8 U.S.C. § 1101(a)(13) (1994) (defining “entry” as “any coming of an alien into the United States, from a foreign port or place or from an outlying possession”).

Former § 1225 provided that aliens “seeking admission” at a port-of-entry who could not demonstrate entitlement to be admitted (“excludable” aliens) were subject to mandatory detention, with potential release solely by means of parole under § 1182(d)(5). *See id.* §§ 1225(a), (b), § 1182(d)(5). The concept of “seeking admission” in former § 1225 appears to have been understood to refer to aliens arriving at a port-of-entry. *See id.* And aliens who entered without inspection and were deportable were taken into custody under the authority of an arrest warrant, and like other deportable aliens, could request bond. *See id.* §§ 1251(a)(1)(B), 1252(a)(1).

As a result, “[aliens] who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while [aliens] who actually presented themselves to authorities for inspection were restrained by more summary exclusion proceedings.” *Martinez v. Att’y Gen.*, 693 F.3d 408, 413 n.5 (3d Cir. 2012) (internal quotation marks and citation omitted). “To remedy this unintended and undesirable consequence, the IIRIRA substituted ‘admission’ for ‘entry,’ and replaced deportation and exclusion proceedings with the more general ‘removal’ proceeding.” *Id.* Consistent with this

dichotomy, the INA, as amended by the IIRIRA, defines *all* those who have not been admitted to the United States as “applicants for admission.” IIRIRA § 302, 110 Stat. 3009-579.

Moreover, Congress’s use of the present participle—“seeking”—in § 1225(b)(2)(A) should not be ignored. *See United States v. Wilson*, 503 U.S. 329, 333 (1992) (“Congress’ use of a verb tense is significant in construing statutes.”). By using the present participle “seeking,” § 1225(b)(2)(A) “signal[s] present and continuing action.” *See Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022). And the phrase “seeking admission” should not be understood to refer to “something in the past that has ended or something yet to come.” *See Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019). Thus, when pursuant to § 1225(b)(2)(A) an “examining immigration officer determines” that an alien “is not clearly and beyond a doubt entitled to be admitted,” the officer does so contemporaneously with the alien’s present and ongoing action of seeking admission. Indeed, interpreting the present participle “seeking” as denoting an ongoing process is also consistent with its ordinary usage. *See, e.g., Samayoa v. Bondi*, 146 F.4th 128, 134 (1st Cir. 2025) (an inadmissible alien “seeking to remain in the country lawfully” applied for relief in removal proceedings); *Garcia v. USCIS*, 146 F.4th 743, 746 (9th Cir. 2025) (“USCIS requires all U visa holders seeking permanent resident status under 8 U.S.C. § 1255(m) to undergo a medical examination . . .”). Accordingly, just as the alien in *Samayoa* is not only an alien present without admission but also seeking to remain in the United States, Parada Hernandez and Pineda are aliens present without admission, and therefore applicants for admission as defined in § 1225(a)(1), but also aliens seeking admission under § 1225(b)(2)(A).

Congress’s significant amendments to the immigration laws in the IIRIRA support the notion that such aliens are properly detained pursuant to § 1225(b)—specifically,

§ 1225(b)(2)(A). Congress, for example, eliminated certain anomalous provisions that favored aliens who illegally entered without inspection over aliens arriving at ports-of-entry. A rule that treated an alien who enters the country illegally more favorably than an alien detained after arriving at a port-of-entry would “create a perverse incentive to enter at an unlawful rather than a lawful location.” *United States v. Gambino-Ruiz*, 91 F.4th 981, 990 (9th Cir. 2024) (quoting *Thuraissigiam*, 591 U.S. at 140). Such a scenario reflects “the precise situation that Congress intended to do away with by enacting” the IIRIRA. *Id.* “Congress intended to eliminate the anomaly under which illegal aliens who have entered the United States without inspection gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry.” *Ortega-Lopez v. Barr*, 978 F.3d 680, 682 (9th Cir. 2020) (internal quotation marks and citation omitted).

As discussed by the BIA in *Matter of Yajure Hurtado*, during the IIRIRA’s legislative drafting process, Congress asserted the importance of controlling illegal immigration and securing the land borders of the United States. *See* 29 I&N Dec. at 222–24 (discussing H.R. Rep. 104-469 (1996)). As alluded to above, one goal of the IIRIRA was to “reform the legal immigration system and facilitate legal entries into the United States.” H.R. Rep. No. 104-828, at 1. Affording bond hearings to aliens present without admission, who have evaded immigration authorities and illegally entered the United States, but not affording such hearings to arriving aliens, who are attempting to comply with U.S. immigration law, is anomalous with and runs counter to that goal.

4. Applicants for admission may be released from detention on an 8 U.S.C. § 1182(d)(5) parole, but that is a discretionary matter.

Importantly, applicants for admission may only be released from detention if the government invokes its discretionary parole authority under § 1182(d)(5), which can be

exercised with respect to “any alien applying for admission to the United States” on a “case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C.

§ 1182(d)(5)(A). In *Jennings*, the Supreme Court placed significance on the fact that § 1182(d)(5) is the specific provision that authorizes release from detention under § 1225(b), at the government’s discretion. *Jennings*, 583 U.S. at 300. Specifically, the Court emphasized that “[r]egardless of which of those two sections [§ 1225(b)(1) or (b)(2)] authorizes . . . detention, applicants for admission may be temporarily released on parole” *Id.* at 288.

The parole authority under § 1182(d)(5), however, is “delegated solely to the Secretary of Homeland Security.” *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 261 (BIA 2010); *see* 8 C.F.R. § 212.5(a). And parole does not constitute a lawful admission or a determination of admissibility, 8 U.S.C. §§ 1101(a)(13)(B), 1182(d)(5)(A), so an alien granted parole remains an applicant for admission, *id.* § 1182(d)(5)(A); *see* 8 C.F.R. § 1.2 (providing that “[a]n arriving alien remains an arriving alien even if paroled pursuant to [§ 1182(d)(5)], and even after any such parole is terminated or revoked”). Here, accepting Parada Hernandez and Pineda’s theory that applicants for admission are nonetheless eligible for bond under § 1226 would run headlong against the specific grant of parole authority as to applicants for admission, in § 1182(d)(5).

5. The Due Process Clause does not entitle Parada Hernandez and Pineda to any relief.

As discussed above, the relevant immigration statutes, properly construed, provide no entitlement to relief for Parada Hernandez and Pineda. Nor does the Due Process Clause. Instead, mandatory detention under § 1225(b)(2) is constitutionally permissible—particularly where, as here, Parada Hernandez has been detained for a very short period of time. The Supreme Court has held that detention during removal proceedings, even without access to a bond hearing, is constitutional. In *Demore v. Kim*, the Supreme Court upheld the

constitutionality of § 1226(c), which mandates the detention of certain aliens during removal proceedings without access to bond hearings. 538 U.S. 510, 522 (2003). The Court “recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process,” and also reaffirmed its “longstanding view that the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 523, 526. The Court further explained that “when the Government deals with deportable aliens, the Due Process Clause does not require it to employ the least burdensome means to accomplish its goal.” *Id.* at 528. With respect to due process concerns, the Court recognized that it “has firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.” *Id.* at 522.

Here, Parada Hernandez is being detained for the limited purpose of removal proceedings and determining his removability. Such detention is not punitive or done for other reasons than to address removability, which will occur in the removal proceedings. Whether framed as a substantive or procedural due process claim, the principles set forth in *Demore* govern this case. Substantive due process protects “only ‘those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.’” *Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). Any substantive due process claim therefore fails here because “the through line of history” is that the federal government has “sovereign authority to set the terms governing the admission and exclusion of noncitizens.” *Id.* at 911, 912. Indeed, as noted above, Congress in exercising this “broad power over naturalization and immigration . . . regularly makes rules that would be unacceptable if applied to citizens.” *Demore*, 538 U.S. at 522 (internal quotation marks and citation omitted). Consistent with these principles, the Supreme Court has long recognized that

“the Government may constitutionally detain deportable aliens during the limited period necessary for their removal proceedings.” *Id.* at 526.

Nor is any procedural due process claim availing. Such a claim fails because where Congress has substantively mandated detention pending removal proceedings, an alien cannot displace that substantive choice with a procedural due process claim. As discussed, aliens are not entitled to bond hearings as a matter of substantive due process. *See Demore*, 538 U.S. at 523–29. Under *Demore*, Congress may reasonably determine—as it did here—to subject aliens who were never inspected or admitted to this country to detention without bond while the government determines their removability. And “an alien in [that] position has only those rights regarding admission that Congress has provided by statute.” *Thuraissigiam*, 591 U.S. at 140. Congress has not created any procedural rights to a bond hearing for applicants for admission. *See Jennings*, 583 U.S. at 297. “Read most naturally,” § 1225 “mandate[s] detention of applicants for admission until certain proceedings have concluded.” *Id.* And the statute says nothing “whatsoever about bond hearings.” *Id.* No procedural due process claim is stated.

6. The Court should decline to issue any temporary relief and should also decline to follow contrary recent decisions from other district courts.

In light of the above, Parada Hernandez and Pineda’s claims all fail on the merits, and therefore there is no basis for granting temporary relief because no likelihood of success on the merits can be shown. *See Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974). Moreover, because the government is effectively responding to the full merits of the petition through this consolidated answer and response, consideration of the other traditional factors for temporary or preliminary relief is unnecessary—Parada Hernandez and Pineda have no likelihood of success (or actual success) on the merits, so that can be the end of the analysis.

The government does recognize, as the Court referenced in its October 8, 2025 order, that a district court in the Western District of Texas has recently addressed similar issues relating to the BIA's *Matter of Yajure Hurtado* decision and issued a writ of habeas corpus requiring a bond hearing or, if no such hearing was afforded, the petitioner's release. (*See* Dkt. No. 6 at 2–3 (citing *Lopez-Arevelo v. Ripa*, ___ F. Supp. 3d ___, No. EP-25-CV-337-KC, 2025 WL 2691828 (W.D. Tex. Sept. 22, 2025)).) It is respectfully submitted, however, that *Lopez-Arevelo* and other similar cases cited therein were wrongfully decided and that a correct understanding of the relevant statutory provisions and constitutional backdrop—as discussed herein—leads to the conclusion that applicants for admission in the position of Parada Hernandez and Pineda are permissibly subject to mandatory detention under § 1225.

IV. Conclusion

The petition for writ of habeas corpus, and the accompanying motion for temporary restraining order, should each be denied.

Respectfully submitted,

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Certificate of Service

On October 16, 2025, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

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